

By Senator Wilson

33-00077-09

200986__

1 A bill to be entitled
2 An act relating to criminal records; amending s.
3 943.0515, F.S.; requiring the Department of Law
4 Enforcement to notify certain specified agencies of
5 the criminal records of a minor which are expunged;
6 requiring the arresting agency, the county, and the
7 department to notify those entities that received the
8 criminal records information; requiring that criminal
9 history records that are to be expunged be physically
10 destroyed or obliterated by the criminal justice
11 agency having physical custody of the records;
12 amending s. 943.0585, F.S.; prohibiting certain
13 criminal records from being expunged; providing that
14 other records may be expunged under certain
15 circumstances; providing that certain information be
16 included in the application for a certificate of
17 eligibility for expunction; prohibiting an agency,
18 organization, or company to which criminal history
19 information was disseminated from releasing the
20 expunged information after a specified period;
21 amending s. 943.059, F.S.; prohibiting certain
22 criminal records from being sealed; providing that
23 other records may be sealed under certain
24 circumstances; requiring that certain information be
25 included in the application for a certificate of
26 eligibility for sealing; prohibiting an agency,
27 organization, or company to which criminal history
28 information was disseminated from releasing the sealed
29 information after a specified period; amending s.

33-00077-09

200986__

30 943.0582, F.S.; conforming a cross-reference;
31 providing an effective date.
32

33 Be It Enacted by the Legislature of the State of Florida:
34

35 Section 1. Present subsection (3) of section 943.0515,
36 Florida Statutes, is redesignated as subsection (5), and new
37 subsections (3) and (4) are added to that section, to read:

38 943.0515 Retention of criminal history records of minors.—

39 (3) The department shall notify the appropriate clerk of
40 the court, the state attorney or statewide prosecutor, the
41 county, and the arresting agency of any criminal history record
42 that is expunged under this section. The arresting agency shall
43 send the department's notification to any other agency to which
44 the arresting agency disseminated the criminal history record
45 information and to which the order pertains. The county shall
46 send the department's notification to any agency, organization,
47 or company to which the county disseminated the criminal history
48 information and to which the order pertains. The department
49 shall send the notification of expungement to the Federal Bureau
50 of Investigation. The clerk of the court shall certify a copy of
51 the department's notification to any other agency that has
52 received the criminal history record, as reflected in the
53 records of the court.

54 (4) Any criminal history record that is expunged by the
55 department under this section must be physically destroyed or
56 obliterated by any criminal justice agency that has custody of
57 the record, except that a criminal history record in the custody
58 of the department must be retained in all cases.

33-00077-09

200986__

59 Section 2. Section 943.0585, Florida Statutes, is amended
60 to read:

61 943.0585 Court-ordered expunction of criminal history
62 records.—The courts of this state have jurisdiction over their
63 own procedures, including the maintenance, expunction, and
64 correction of judicial records containing criminal history
65 information to the extent such procedures are not inconsistent
66 with the conditions, responsibilities, and duties established by
67 this section. Any court of competent jurisdiction may order a
68 criminal justice agency to expunge the criminal history record
69 of a minor or an adult who complies with the requirements of
70 this section. The court shall not order a criminal justice
71 agency to expunge a criminal history record until the person
72 seeking to expunge a criminal history record has applied for and
73 received a certificate of eligibility for expunction pursuant to
74 subsection (3) ~~(2)~~.

75 (1) PROHIBITION AGAINST EXPUNGING CERTAIN RECORDS.—A
76 criminal history record that relates to a violation of s.
77 393.135, s. 394.4593, s. 787.025, chapter 794, s. 796.03, s.
78 800.04, s. 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter
79 839, s. 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s.
80 916.1075, a violation enumerated in s. 907.041, or any violation
81 specified as a predicate offense for registration as a sexual
82 predator pursuant to s. 775.21, without regard to whether that
83 offense alone is sufficient to require such registration, or for
84 registration as a sexual offender pursuant to s. 943.0435, may
85 not be expunged, ~~without regard to whether adjudication was~~
86 ~~withheld,~~ if the defendant was found guilty of or pled guilty or
87 nolo contendere to the offense, or if the defendant, as a minor,

33-00077-09

200986__

88 was found to have committed, or pled guilty or nolo contendere
89 to committing, the offense as a delinquent act even if the
90 adjudication was withheld. The prohibition applies only to cases
91 in which the defendant, including a minor, was found guilty of
92 or pled guilty or nolo contendere to the offense. In all other
93 instances involving the enumerated offenses in this subsection,
94 the record may be expunged if an indictment, information, or
95 other charging document was not filed or issued in the case or,
96 if filed or issued in the case, was dismissed or nolle prosequi
97 by the state attorney or statewide prosecutor or was dismissed
98 by a court of competent jurisdiction, or the person was found
99 not guilty or acquitted by a judge or jury. The court may only
100 order expunction of a criminal history record pertaining to one
101 arrest or one incident of alleged criminal activity, except as
102 provided in this section. The court may, at its sole discretion,
103 order the expunction of a criminal history record pertaining to
104 more than one arrest if the additional arrests directly relate
105 to the original arrest. If the court intends to order the
106 expunction of records pertaining to such additional arrests,
107 such intent must be specified in the order. A criminal justice
108 agency may not expunge any record pertaining to such additional
109 arrests if the order to expunge does not articulate the
110 intention of the court to expunge a record pertaining to more
111 than one arrest. This section does not prevent the court from
112 ordering the expunction of only a portion of a criminal history
113 record pertaining to one arrest or one incident of alleged
114 criminal activity. Notwithstanding any law to the contrary, a
115 criminal justice agency may comply with laws, court orders, and
116 official requests of other jurisdictions relating to expunction,

33-00077-09

200986__

117 correction, or confidential handling of criminal history records
118 or information derived therefrom. This section does not confer
119 any right to the expunction of any criminal history record, and
120 any request for expunction of a criminal history record may be
121 denied at the sole discretion of the court.

122 (2)~~(1)~~ PETITION TO EXPUNGE A CRIMINAL HISTORY RECORD.—Each
123 petition to a court to expunge a criminal history record is
124 complete only when accompanied by:

125 (a) A valid certificate of eligibility for expunction
126 issued by the department pursuant to subsection (3) ~~(2)~~.

127 (b) The petitioner's sworn statement attesting that the
128 petitioner:

129 1. Has never, before ~~prior to~~ the date on which the
130 petition is filed, been adjudicated guilty of a criminal offense
131 or comparable ordinance violation, or been adjudicated
132 delinquent for committing any felony or a misdemeanor specified
133 in s. 943.051(3) (b).

134 2. Has not been adjudicated guilty of, or adjudicated
135 delinquent for committing, any of the acts stemming from the
136 arrest or alleged criminal activity to which the petition
137 pertains.

138 3. Except as otherwise provided in this section, has never
139 secured a prior sealing or expunction of a criminal history
140 record under this section, former s. 893.14, former s. 901.33,
141 or former s. 943.058, or from any jurisdiction outside the
142 state, unless expunction is sought of a criminal history record
143 previously sealed for 10 years pursuant to paragraph (2) (h) and
144 the record is otherwise eligible for expunction.

145 4. Is eligible for ~~such~~ an expunction to the best of his or

33-00077-09

200986__

146 her knowledge or belief and does not have any other petition to
147 expunge or any petition to seal pending before any court.

148
149 A ~~Any~~ person who knowingly provides false information on a ~~such~~
150 sworn statement to the court commits a felony of the third
151 degree, punishable as provided in s. 775.082, s. 775.083, or s.
152 775.084.

153 (3) ~~(2)~~ CERTIFICATE OF ELIGIBILITY FOR EXPUNCTION.—Before
154 ~~Prior to~~ petitioning the court to expunge a criminal history
155 record, a person seeking to expunge a criminal history record
156 shall apply to the department for a certificate of eligibility
157 for expunction. The department shall, by rule adopted under
158 ~~pursuant to~~ chapter 120, establish procedures pertaining to the
159 application for and issuance of certificates of eligibility for
160 expunction. A certificate of eligibility for expunction is valid
161 for 12 months after the date stamped on the certificate when
162 issued by the department. After that time, the petitioner must
163 reapply to the department for a new certificate of eligibility.
164 Eligibility for a renewed certification of eligibility must be
165 based on the status of the applicant and the law in effect at
166 the time of the renewal application. The department shall issue
167 a certificate of eligibility for expunction to a person who is
168 the subject of a criminal history record if that person:

169 (a) Has obtained, and submitted to the department, a
170 written, certified statement from the appropriate state attorney
171 or statewide prosecutor which indicates:

172 1. That an indictment, information, or other charging
173 document was not filed or issued in the case.

174 2. That an indictment, information, or other charging

33-00077-09

200986__

175 document, if filed or issued in the case, was dismissed or nolle
176 prosequi by the state attorney or statewide prosecutor, or was
177 dismissed by a court of competent jurisdiction, or that the
178 person was found not guilty or acquitted by a judge or jury, and
179 that none of the charges related to the arrest or alleged
180 criminal activity to which the petition to expunge pertains
181 resulted in a trial, without regard to whether the outcome of
182 the trial was other than an adjudication of guilt.

183 3. That the criminal history record does not relate to a
184 violation of s. 393.135, s. 394.4593, s. 787.025, chapter 794,
185 s. 796.03, s. 800.04, s. 810.14, s. 817.034, s. 825.1025, s.
186 827.071, chapter 839, s. 847.0133, s. 847.0135, s. 847.0145, s.
187 893.135, s. 916.1075, a violation enumerated in s. 907.041, or
188 any violation specified as a predicate offense for registration
189 as a sexual predator under ~~pursuant to~~ s. 775.21, without regard
190 to whether that offense alone is sufficient to require such
191 registration, or for registration as a sexual offender under
192 ~~pursuant to~~ s. 943.0435, where the defendant was found guilty
193 of, or pled guilty or nolo contendere to any such offense, or
194 that the defendant, as a minor, was found to have committed, or
195 pled guilty or nolo contendere to committing, such an offense as
196 a delinquent act, without regard to whether adjudication was
197 withheld.

198 (b) Remits a \$75 processing fee to the department for
199 placement in the Department of Law Enforcement Operating Trust
200 Fund, unless such fee is waived by the executive director.

201 (c) Has submitted to the department a certified copy of the
202 disposition of the charge to which the petition to expunge
203 pertains.

33-00077-09

200986__

204 (d) Has never, before ~~prior to~~ the date on which the
205 application for a certificate of eligibility is filed, been
206 adjudicated guilty of a criminal offense or comparable ordinance
207 violation, or been adjudicated delinquent for committing any
208 felony or a misdemeanor specified in s. 943.051(3) (b).

209 (e) Has not been adjudicated guilty of, or adjudicated
210 delinquent for committing, any of the acts stemming from the
211 arrest or alleged criminal activity to which the petition to
212 expunge pertains.

213 (f) Has never secured a prior sealing or expunction of a
214 criminal history record under this section, former s. 893.14,
215 former s. 901.33, or former s. 943.058 involving an offense for
216 which the defendant had been found guilty or pled guilty or nolo
217 contendere, unless expunction is sought of a criminal history
218 record previously sealed for 10 years pursuant to paragraph (h)
219 and the record is otherwise eligible for expunction.

220 (g) Is no longer under court supervision applicable to the
221 disposition of the arrest or alleged criminal activity to which
222 the petition to expunge pertains.

223 (h) Has previously obtained a court order sealing the
224 record under this section, former s. 893.14, former s. 901.33,
225 or former s. 943.058 for a minimum of 10 years because
226 adjudication was withheld or because all charges related to the
227 arrest or alleged criminal activity to which the petition to
228 expunge pertains were not dismissed before ~~prior to~~ trial,
229 without regard to whether the outcome of the trial was other
230 than an adjudication of guilt. The requirement for the record to
231 have previously been sealed for a minimum of 10 years does not
232 apply when a plea was not entered or all charges related to the

33-00077-09

200986__

233 arrest or alleged criminal activity to which the petition to
234 expunge pertains were dismissed prior to trial.

235 (4) ~~(3)~~ PROCESSING OF A PETITION OR ORDER TO EXPUNGE.—

236 (a) In judicial proceedings under this section, a copy of
237 the completed petition to expunge shall be served upon the
238 appropriate state attorney or the statewide prosecutor and upon
239 the arresting agency; however, it is not necessary to make any
240 agency other than the state a party. The appropriate state
241 attorney or the statewide prosecutor and the arresting agency
242 may respond to the court regarding the completed petition to
243 expunge.

244 (b) If relief is granted by the court, the clerk of the
245 court shall certify copies of the order to the appropriate state
246 attorney or the statewide prosecutor, the county, and the
247 arresting agency. The arresting agency is responsible for
248 forwarding the order to any other agency to which the arresting
249 agency disseminated the criminal history record information to
250 which the order pertains. The county is responsible for
251 forwarding the order to any agency, organization, or company to
252 which the county disseminated the criminal history information
253 to which the order pertains. The department shall forward the
254 order to expunge to the Federal Bureau of Investigation. The
255 clerk of the court shall certify a copy of the order to any
256 other agency which the records of the court reflect has received
257 the criminal history record from the court.

258 (c) For an order to expunge entered by a court before ~~prior~~
259 ~~to~~ July 1, 1992, the department shall notify the appropriate
260 state attorney or statewide prosecutor of an order to expunge
261 which is contrary to law because the person who is the subject

33-00077-09

200986__

262 of the record has previously been convicted of a crime or
263 comparable ordinance violation or has had a prior criminal
264 history record sealed or expunged. Upon receipt of such notice,
265 the appropriate state attorney or statewide prosecutor shall
266 take action, within 60 days, to correct the record and petition
267 the court to void the order to expunge. The department shall
268 seal the record until such time as the order is voided by the
269 court.

270 (d) On or after July 1, 1992, the department or any other
271 criminal justice agency is not required to act on an order to
272 expunge entered by a court when such order does not comply with
273 the requirements of this section. Upon receipt of such an order,
274 the department must notify the issuing court, the appropriate
275 state attorney or statewide prosecutor, the petitioner or the
276 petitioner's attorney, and the arresting agency of the reason
277 for noncompliance. The appropriate state attorney or statewide
278 prosecutor shall take action within 60 days to correct the
279 record and petition the court to void the order. No cause of
280 action, including contempt of court, shall arise against any
281 criminal justice agency for failure to comply with an order to
282 expunge when the petitioner for such order failed to obtain the
283 certificate of eligibility as required by this section or such
284 order does not otherwise comply with the requirements of this
285 section.

286 (5)~~(4)~~ EFFECT OF CRIMINAL HISTORY RECORD EXPUNCTION.—Any
287 criminal history record of a minor or an adult which is ordered
288 expunged by a court of competent jurisdiction under ~~pursuant to~~
289 this section must be physically destroyed or obliterated by any
290 criminal justice agency having custody of such record; except

33-00077-09

200986__

291 that any criminal history record in the custody of the
292 department must be retained in all cases. A criminal history
293 record ordered expunged that is retained by the department is
294 confidential and exempt from the provisions of s. 119.07(1) and
295 s. 24(a), Art. I of the State Constitution and not available to
296 any person or entity except upon order of a court of competent
297 jurisdiction. A criminal justice agency may retain a notation
298 indicating compliance with an order to expunge.

299 (a) The person who is the subject of a criminal history
300 record that is expunged under this section or under other
301 provisions of law, including former s. 893.14, former s. 901.33,
302 and former s. 943.058, may lawfully deny or fail to acknowledge
303 the arrests covered by the expunged record, except when the
304 subject of the record:

- 305 1. Is a candidate for employment with a criminal justice
306 agency;
- 307 2. Is a defendant in a criminal prosecution;
- 308 3. Concurrently or subsequently petitions for relief under
309 this section or s. 943.059;
- 310 4. Is a candidate for admission to The Florida Bar;
- 311 5. Is seeking to be employed or licensed by or to contract
312 with the Department of Children and Family Services, the Agency
313 for Health Care Administration, the Agency for Persons with
314 Disabilities, or the Department of Juvenile Justice or to be
315 employed or used by such contractor or licensee in a sensitive
316 position having direct contact with children, the
317 developmentally disabled, the aged, or the elderly as provided
318 in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s.
319 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4),

33-00077-09

200986__

320 chapter 916, s. 985.644, chapter 400, or chapter 429;

321 6. Is seeking to be employed or licensed by the Department
322 of Education, any district school board, any university
323 laboratory school, any charter school, any private or parochial
324 school, or any local governmental entity that licenses child
325 care facilities; or

326 7. Is seeking authorization from a Florida seaport
327 identified in s. 311.09 for employment within or access to one
328 or more of such seaports pursuant to s. 311.12 or s. 311.125.

329 (b) Subject to the exceptions in paragraph (a), a person
330 who has been granted an expunction under this section, former s.
331 893.14, former s. 901.33, or former s. 943.058 may not be held
332 under any provision of law of this state to commit perjury or to
333 be otherwise liable for giving a false statement by reason of
334 such person's failure to recite or acknowledge an expunged
335 criminal history record.

336 (c) Information relating to the existence of an expunged
337 criminal history record which is provided in accordance with
338 paragraph (a) is confidential and exempt from the provisions of
339 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
340 except that the department shall disclose the existence of a
341 criminal history record ordered expunged to the entities set
342 forth in subparagraphs (a)1., 4., 5., 6., and 7. for their
343 respective licensing, access authorization, and employment
344 purposes, and to criminal justice agencies for their respective
345 criminal justice purposes. It is unlawful for any employee of an
346 entity set forth in subparagraph (a)1., subparagraph (a)4.,
347 subparagraph (a)5., subparagraph (a)6., or subparagraph (a)7. to
348 disclose information relating to the existence of an expunged

33-00077-09

200986__

349 criminal history record of a person seeking employment, access
350 authorization, or licensure with such entity or contractor,
351 except to the person to whom the criminal history record relates
352 or to persons having direct responsibility for employment,
353 access authorization, or licensure decisions. Any person who
354 violates this paragraph commits a misdemeanor of the first
355 degree, punishable as provided in s. 775.082 or s. 775.083.

356 (d) An agency, organization, or company to which the
357 county, department, or arresting agency disseminated the
358 criminal history information and which has received the order
359 expunging the record may not release the expunged information to
360 the public after 30 days following the date that it receives the
361 court order expunging the record.

362 (6)~~(5)~~ STATUTORY REFERENCES.—Any reference to any other
363 chapter, section, or subdivision of the Florida Statutes in this
364 section constitutes a general reference under the doctrine of
365 incorporation by reference.

366 Section 3. Section 943.059, Florida Statutes, is amended to
367 read:

368 943.059 Court-ordered sealing of criminal history records.—
369 The courts of this state shall continue to have jurisdiction
370 over their own procedures, including the maintenance, sealing,
371 and correction of judicial records containing criminal history
372 information to the extent such procedures are not inconsistent
373 with the conditions, responsibilities, and duties established by
374 this section. Any court of competent jurisdiction may order a
375 criminal justice agency to seal the criminal history record of a
376 minor or an adult who complies with the requirements of this
377 section. The court may ~~shall~~ not order a criminal justice agency

33-00077-09

200986__

378 to seal a criminal history record until the person seeking to
379 seal a criminal history record has applied for and received a
380 certificate of eligibility for sealing pursuant to subsection
381 (3) ~~(2)~~.

382 (1) PROHIBITION AGAINST SEALING CERTAIN RECORDS.—A criminal
383 history record that relates to a violation of s. 393.135, s.
384 394.4593, s. 787.025, chapter 794, s. 796.03, s. 800.04, s.
385 810.14, s. 817.034, s. 825.1025, s. 827.071, chapter 839, s.
386 847.0133, s. 847.0135, s. 847.0145, s. 893.135, s. 916.1075, a
387 violation enumerated in s. 907.041, or any violation specified
388 as a predicate offense for registration as a sexual predator
389 pursuant to s. 775.21, without regard to whether that offense
390 alone is sufficient to require such registration, or for
391 registration as a sexual offender pursuant to s. 943.0435, may
392 not be sealed, ~~without regard to whether adjudication was~~
393 ~~withheld,~~ if the defendant was found guilty of or pled guilty or
394 nolo contendere to the offense, or if the defendant, as a minor,
395 was found to have committed or pled guilty or nolo contendere to
396 committing the offense as a delinquent act even if the
397 adjudication was withheld. The prohibition applies only to cases
398 in which the defendant, including a minor, was found guilty of
399 or pled guilty or nolo contendere to the offense. In all other
400 instances involving the enumerated offenses in this subsection,
401 the record may be sealed if an indictment, information, or other
402 charging document was not filed or issued in the case or, if
403 filed or issued in the case, was dismissed or nolle prosequi by
404 the state attorney or statewide prosecutor or was dismissed by a
405 court of competent jurisdiction, or the person was found not
406 guilty or acquitted by a judge or jury. The court may only order

33-00077-09

200986__

407 sealing of a criminal history record pertaining to one arrest or
 408 one incident of alleged criminal activity, except as provided in
 409 this section. The court may, at its sole discretion, order the
 410 sealing of a criminal history record pertaining to more than one
 411 arrest if the additional arrests directly relate to the original
 412 arrest. If the court intends to order the sealing of records
 413 pertaining to such additional arrests, such intent must be
 414 specified in the order. A criminal justice agency may not seal
 415 any record pertaining to such additional arrests if the order to
 416 seal does not articulate the intention of the court to seal
 417 records pertaining to more than one arrest. This section does
 418 not prevent the court from ordering the sealing of only a
 419 portion of a criminal history record pertaining to one arrest or
 420 one incident of alleged criminal activity. Notwithstanding any
 421 law to the contrary, a criminal justice agency may comply with
 422 laws, court orders, and official requests of other jurisdictions
 423 relating to sealing, correction, or confidential handling of
 424 criminal history records or information derived therefrom. This
 425 section does not confer any right to the sealing of any criminal
 426 history record, and any request for sealing a criminal history
 427 record may be denied at the sole discretion of the court.

428 (2)~~(1)~~ PETITION TO SEAL A CRIMINAL HISTORY RECORD.—Each
 429 petition to a court to seal a criminal history record is
 430 complete only when accompanied by:

431 (a) A valid certificate of eligibility for sealing issued
 432 by the department pursuant to subsection (3) ~~(2)~~.

433 (b) The petitioner's sworn statement attesting that the
 434 petitioner:

435 1. Has never, before ~~prior to~~ the date on which the

33-00077-09

200986__

436 petition is filed, been adjudicated guilty of a criminal offense
437 or comparable ordinance violation, or been adjudicated
438 delinquent for committing any felony or a misdemeanor specified
439 in s. 943.051(3) (b).

440 2. Has not been adjudicated guilty of or adjudicated
441 delinquent for committing any of the acts stemming from the
442 arrest or alleged criminal activity to which the petition to
443 seal pertains.

444 3. Except as otherwise provided in this section, has never
445 secured a prior sealing or expunction of a criminal history
446 record under this section, former s. 893.14, former s. 901.33,
447 former s. 943.058, or from any jurisdiction outside the state.

448 4. Is eligible for such a sealing to the best of his or her
449 knowledge or belief and does not have any other petition to seal
450 or any petition to expunge pending before any court.

451
452 A ~~Any~~ person who knowingly provides false information on a ~~such~~
453 sworn statement to the court commits a felony of the third
454 degree, punishable as provided in s. 775.082, s. 775.083, or s.
455 775.084.

456 (3) ~~(2)~~ CERTIFICATE OF ELIGIBILITY FOR SEALING.—Before ~~Prior~~
457 ~~to~~ petitioning the court to seal a criminal history record, a
458 person seeking to seal a criminal history record shall apply to
459 the department for a certificate of eligibility for sealing. The
460 department shall, by rule adopted pursuant to chapter 120,
461 establish procedures pertaining to the application for and
462 issuance of certificates of eligibility for sealing. A
463 certificate of eligibility for sealing is valid for 12 months
464 after the date stamped on the certificate when issued by the

33-00077-09

200986__

465 department. After that time, the petitioner must reapply to the
466 department for a new certificate of eligibility. Eligibility for
467 a renewed certification of eligibility must be based on the
468 status of the applicant and the law in effect at the time of the
469 renewal application. The department shall issue a certificate of
470 eligibility for sealing to a person who is the subject of a
471 criminal history record provided that such person:

472 (a) Has submitted to the department a certified copy of the
473 disposition of the charge to which the petition to seal
474 pertains.

475 (b) Remits a \$75 processing fee to the department for
476 placement in the Department of Law Enforcement Operating Trust
477 Fund, unless such fee is waived by the executive director.

478 (c) Has never, before ~~prior to~~ the date on which the
479 application for a certificate of eligibility is filed, been
480 adjudicated guilty of a criminal offense or comparable ordinance
481 violation, or been adjudicated delinquent for committing any
482 felony or a misdemeanor specified in s. 943.051(3)(b).

483 (d) Has not been adjudicated guilty of or adjudicated
484 delinquent for committing any of the acts stemming from the
485 arrest or alleged criminal activity to which the petition to
486 seal pertains.

487 (e) Has never secured a prior sealing or expunction of a
488 criminal history record under this section, former s. 893.14,
489 former s. 901.33, or former s. 943.058 involving an offense for
490 which the defendant had been found guilty or pled guilty or nolo
491 contendere.

492 (f) Is no longer under court supervision applicable to the
493 disposition of the arrest or alleged criminal activity to which

33-00077-09

200986__

494 the petition to seal pertains.

495 (4)~~(3)~~ PROCESSING OF A PETITION OR ORDER TO SEAL.—

496 (a) In judicial proceedings under this section, a copy of
497 the completed petition to seal shall be served upon the
498 appropriate state attorney or the statewide prosecutor and upon
499 the arresting agency; however, it is not necessary to make any
500 agency other than the state a party. The appropriate state
501 attorney or the statewide prosecutor and the arresting agency
502 may respond to the court regarding the completed petition to
503 seal.

504 (b) If relief is granted by the court, the clerk of the
505 court shall certify copies of the order to the appropriate state
506 attorney or the statewide prosecutor, the county, and ~~to~~ the
507 arresting agency. The arresting agency is responsible for
508 forwarding the order to any other agency to which the arresting
509 agency disseminated the criminal history record information to
510 which the order pertains. The county is responsible for
511 forwarding the order to any agency, organization, or company to
512 which the county disseminated the criminal history information
513 to which the order pertains. The department shall forward the
514 order to seal to the Federal Bureau of Investigation. The clerk
515 of the court shall certify a copy of the order to any other
516 agency which the records of the court reflect has received the
517 criminal history record from the court.

518 (c) For an order to seal entered by a court before ~~prior to~~
519 July 1, 1992, the department shall notify the appropriate state
520 attorney or statewide prosecutor of any order to seal which is
521 contrary to law because the person who is the subject of the
522 record has previously been convicted of a crime or comparable

33-00077-09

200986__

523 ordinance violation or has had a prior criminal history record
524 sealed or expunged. Upon receipt of such notice, the appropriate
525 state attorney or statewide prosecutor shall take action, within
526 60 days, to correct the record and petition the court to void
527 the order to seal. The department shall seal the record until
528 such time as the order is voided by the court.

529 (d) On or after July 1, 1992, the department or any other
530 criminal justice agency is not required to act on an order to
531 seal entered by a court when such order does not comply with the
532 requirements of this section. Upon receipt of such an order, the
533 department must notify the issuing court, the appropriate state
534 attorney or statewide prosecutor, the petitioner or the
535 petitioner's attorney, and the arresting agency of the reason
536 for noncompliance. The appropriate state attorney or statewide
537 prosecutor shall take action within 60 days to correct the
538 record and petition the court to void the order. No cause of
539 action, including contempt of court, shall arise against any
540 criminal justice agency for failure to comply with an order to
541 seal when the petitioner for such order failed to obtain the
542 certificate of eligibility as required by this section or when
543 such order does not comply with the requirements of this
544 section.

545 (e) An order sealing a criminal history record under
546 ~~pursuant to~~ this section does not require that such record be
547 surrendered to the court, and such record shall continue to be
548 maintained by the department and other criminal justice
549 agencies.

550 (f) An agency, organization, or company to which the
551 county, department, or arresting agency disseminated the

33-00077-09

200986__

552 criminal history information and which has received the order
553 sealing the record may not release the sealed information to the
554 public after 30 days following the date that it receives the
555 court order sealing the record.

556 (5)~~(4)~~ EFFECT OF CRIMINAL HISTORY RECORD SEALING.—A
557 criminal history record of a minor or an adult which is ordered
558 sealed by a court of competent jurisdiction pursuant to this
559 section is confidential and exempt from the provisions of s.
560 119.07(1) and s. 24(a), Art. I of the State Constitution and is
561 available only to the person who is the subject of the record,
562 to the subject's attorney, to criminal justice agencies for
563 their respective criminal justice purposes, which include
564 conducting a criminal history background check for approval of
565 firearms purchases or transfers as authorized by state or
566 federal law, to judges in the state courts system for the
567 purpose of assisting them in their case-related decisionmaking
568 responsibilities, as set forth in s. 943.053(5), or to those
569 entities set forth in subparagraphs (a)1., 4., 5., 6., and 8.
570 for their respective licensing, access authorization, and
571 employment purposes.

572 (a) The subject of a criminal history record sealed under
573 this section or under other provisions of law, including former
574 s. 893.14, former s. 901.33, and former s. 943.058, may lawfully
575 deny or fail to acknowledge the arrests covered by the sealed
576 record, except when the subject of the record:

- 577 1. Is a candidate for employment with a criminal justice
578 agency;
- 579 2. Is a defendant in a criminal prosecution;
- 580 3. Concurrently or subsequently petitions for relief under

33-00077-09

200986__

581 this section or s. 943.0585;

582 4. Is a candidate for admission to The Florida Bar;

583 5. Is seeking to be employed or licensed by or to contract
584 with the Department of Children and Family Services, the Agency
585 for Health Care Administration, the Agency for Persons with
586 Disabilities, or the Department of Juvenile Justice or to be
587 employed or used by such contractor or licensee in a sensitive
588 position having direct contact with children, the

589 developmentally disabled, the aged, or the elderly as provided
590 in s. 110.1127(3), s. 393.063, s. 394.4572(1), s. 397.451, s.
591 402.302(3), s. 402.313(3), s. 409.175(2)(i), s. 415.102(4), s.
592 415.103, chapter 916, s. 985.644, chapter 400, or chapter 429;

593 6. Is seeking to be employed or licensed by the Department
594 of Education, any district school board, any university
595 laboratory school, any charter school, any private or parochial
596 school, or any local governmental entity that licenses child
597 care facilities;

598 7. Is attempting to purchase a firearm from a licensed
599 importer, licensed manufacturer, or licensed dealer and is
600 subject to a criminal history background check under state or
601 federal law; or

602 8. Is seeking authorization from a Florida seaport
603 identified in s. 311.09 for employment within or access to one
604 or more of such seaports pursuant to s. 311.12 or s. 311.125.

605 (b) Subject to the exceptions in paragraph (a), a person
606 who has been granted a sealing under this section, former s.
607 893.14, former s. 901.33, or former s. 943.058 may not be held
608 under any provision of law of this state to commit perjury or to
609 be otherwise liable for giving a false statement by reason of

33-00077-09

200986__

610 such person's failure to recite or acknowledge a sealed criminal
611 history record.

612 (c) Information relating to the existence of a sealed
613 criminal record provided in accordance with the provisions of
614 paragraph (a) is confidential and exempt from the provisions of
615 s. 119.07(1) and s. 24(a), Art. I of the State Constitution,
616 except that the department shall disclose the sealed criminal
617 history record to the entities set forth in subparagraphs (a)1.,
618 4., 5., 6., and 8. for their respective licensing, access
619 authorization, and employment purposes. It is unlawful for any
620 employee of an entity set forth in subparagraph (a)1.,
621 subparagraph (a)4., subparagraph (a)5., subparagraph (a)6., or
622 subparagraph (a)8. to disclose information relating to the
623 existence of a sealed criminal history record of a person
624 seeking employment, access authorization, or licensure with such
625 entity or contractor, except to the person to whom the criminal
626 history record relates or to persons having direct
627 responsibility for employment, access authorization, or
628 licensure decisions. Any person who violates the provisions of
629 this paragraph commits a misdemeanor of the first degree,
630 punishable as provided in s. 775.082 or s. 775.083.

631 (6)~~(5)~~ STATUTORY REFERENCES.—Any reference to any other
632 chapter, section, or subdivision of the Florida Statutes in this
633 section constitutes a general reference under the doctrine of
634 incorporation by reference.

635 Section 4. Paragraph (a) of subsection (2) of section
636 943.0582, Florida Statutes, is amended to read:

637 943.0582 Prearrest, postarrest, or teen court diversion
638 program expunction.—

33-00077-09

200986__

639 (2) (a) As used in this section, the term "expunction" has
640 the same meaning ascribed in and effect as s. 943.0585, except
641 that:

642 1. The provisions of s. 943.0585(5) (a) ~~s. 943.0585(4) (a)~~ do
643 not apply, except that the criminal history record of a person
644 whose record is expunged pursuant to this section shall be made
645 available only to criminal justice agencies for the purpose of
646 determining eligibility for prearrest, postarrest, or teen court
647 diversion programs; when the record is sought as part of a
648 criminal investigation; or when the subject of the record is a
649 candidate for employment with a criminal justice agency. For all
650 other purposes, a person whose record is expunged under this
651 section may lawfully deny or fail to acknowledge the arrest and
652 the charge covered by the expunged record.

653 2. Records maintained by local criminal justice agencies in
654 the county in which the arrest occurred that are eligible for
655 expunction under ~~pursuant to~~ this section must ~~shall~~ be sealed
656 as the term is used in s. 943.059.

657 Section 5. This act shall take effect July 1, 2009.